THE SUPREME COURT OF WASHINGTON

IN RE:	)	B.A. NUMBER 61
	)	
CLARK GAREN,	)	DISSENT TO DENIAL OF
	)	APPLICATION TO PRACTICE
BAR APPLICANT.	)	LAW
	)	

FILED
MAY 20, 1997

C.J. MERRITT,
CLERK OF THE SUPREME COURT

(SEAL)

STATE OF WASHINGTON)
COUNTY OF THURSTON) ss.

I, C.J. Merritt, Clerk of the Supreme Court of the State of Washington, do hereby certify that this is a true and correct copy of the original on file in my office.

Dated this 20th day of May, 1997

By /s/ C.J. MERRITT

In re Clark Garen, Bar Applicant
B.A. Number 61
Dissent by Sanders, J., to Denial of Application to Practice Law

SANDERS, J. (Dissenting)---

> [T]he profession of an attorney is of great importance to an individual, and the prosperity of his whole life may depend on its exercise. The right to exercise it ought not be lightly or capriciously taken from him.

Chief Justice John Marshall.[1]

"Every person desiring to be admitted to the Bar of the State of Washington must be of good moral character and must qualify for and pass a bar examination." APR3(a). Mr. Clark Garen passed the bar exam yet has been denied admission for alleged deficiency in the "good moral character" department. Such was the result recommended by the Washington State Bar Association's Character and Fitness Committee as well as the Board of Governors. And such is the result imposed by a majority of this court when it denied Mr. Garen's appeal by summary order entered March 6, 1997 without favor of written opinion, published or not.

Perhaps anticipating this turn of events, Mr. Garen requested his appeal be determined by published narrative opinion. The Bar did not object. Reading between the lines, I surmise

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1. *Ex Parte Burr*, 22 U.S. 529, 6 L. Ed. 152, 9 Wheat. 529 (1824).

Mr. Garen believed an adverse result less likely if the court were to judge his cause upon established legal principles of general application. He may have assumed such would be more likely in a disposition by published opinion. But the court's denial of Mr. Garen's request for a narrative opinion published or not, puts this dissenter in the unlikely position of contesting a result which is not only unsupported by persuasive reason, but unsupported by any articulated reason whatsoever.

From a review of the factual background it appears Mr. Garen came to the attention of Bar authorities through his application to practice law in this jurisdiction. Such application is governed by the Admission to Practice Rules (APR) which reserve to the Supreme Court the ultimate authority on such matters but delegate initial responsibility to the Board of Governors. APR3(c) provides "[t]he Board of Governors may, in its discretion, withhold permission from an otherwise qualified person to sit for the bar examination, until completion of an inquiry into the applicant's character and fitness," if, amongst other things, the applicant "has previously been denied admission to the Bar in this or any other jurisdiction for reasons other than failure to pass a bar examination." It appears the Bar has withheld such permission since Mr. Garen, although a member in standing of both the California and Texas bars, has nonetheless been denied admission to practice in Nevada for reasons other than his performance on its bar examination.

In exercise of its prerogative the Board of Governors referred Mr. Garen to its Character and Fitness Committee for further investigation

pursuant to APR 7. That committee then conducted a hearing wherein Mr. Garen was the only live witness, although substantial additional written materials were received into evidence in the form of 13 declarations attesting to Mr. Garen's moral fitness and several hundred pages of transcripts from the Nevada State Bar's proceeding.

Thereafter the Character and Fitness Committee promulgated a written decision recommending that Mr. Garen's application to practice law in this jurisdiction be denied for his alleged failure to possess "good moral character."

The committee's written decision is remarkable in two respect: first, despite quite overwhelming and uncontested evidence, the committee declined to affirmatively find anything morally redeeming about Mr. Garen whatsoever; and, second, the committee failed to factually find in an explicit and objective fashion the Mr. Garen had ever committed an immoral act. Rather the committee's adverse recommendation was ostensibly based on subjective "feelings" and "doubts" rather than objectively verifiable reasons of facts. So as not to deprive the reader of the flavor of the committee's written decision I have attached it verbatim, as an exhibit (see Exhibit A, attached).

As previously recounted, the Board accepted the recommendation of the Character and Fitness Committee that Mr. Garen's application be denied and the majority of this court has affixed its imprimatur to that result as well. I would disagree, however, based upon my perception that Mr. Garen has made a quite adequate prima facie

showing of good moral character which the Bar utterly failed to disprove.

Analysis begins by noting the paucity of published authority in this jurisdiction on the meaning of "good moral character," much less the recommended procedure for it to be proved, or disproved. Only two published decisions emanate from this court on the topic: *In re Belsher*, 102 Wn.2d 844, 689 P.2d 1078 (1984) and *In re Wright*, 102 Wn.2d 855, 690 P.2d 1134 (1984). In both cases the applicant came to the court burdened with a record of serious misconduct. Dennis Belsher, for example, blew up his parents' car with a home-made bomb, although his parents miraculously escaped injury. Nevertheless, the Board of Governors found Mr. Belsher fit to practice law in this State, although ultimately this court turned aside the favorable recommendation, concluding it was not in the interest of the public or the Bar to admit Mr. Belsher to practice "at this time." *Belsher*, 102 Wn.2d at 854. The second case, *In re Wright*, was apparently a closer case as it ended in a split decision, four justices favoring the admission of Mr. Wright as per the Bar's recommendation, four justices opposed. Mr. Wright had been convicted of second degree murder while armed with a firearm. While his appeal was pending from this criminal conviction, he was charged and ultimately pleaded guilty to possession of heroin as well.

The issue presented to the court in both cases was whether or not these individuals had been sufficiently rehabilitated since their prior criminal activities which, all would seem to admit, were in themselves inconsistent with good moral character. The court in *Belsher*

recited that the burden to demonstrate good moral character rests on the applicant.[2] *Belsher*, however did not determine whether the burden imposed upon the new applicants should be severe as that imposed upon an applicant for reinstatement, finding unnecessary to determine the applicability of the California rule which generally provides:

> The person seeking reinstatement, after disbarment, should be required to present stronger proof of his present honesty and integrity than one seeking admission for the first time whose character has never been in question.

Belsher, 102 Wn.2d at 851 (quoting *Tardiff v. State Bar*, 27 Cal. 3d 395, 403, 612 P.2d 919, 165 Cal. Rptr. 829 (1980)) (quoting *Roth v. State Bar*, 40 Cal. 2d 307, 313, 253 P.2d 969, 974 (1953)).

However assuming reinstatement places no less a burden on the applicant to show good moral character, if not considerably more than would be the case for an original applicant, it

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2. In an initial disciplinary proceeding the burden is on the Bar to prove misconduct by clear and convincing evidence. *In re Allotta*, 109 Wn.2d 787, 792, 748 P.2d 628 (1988). Our authority does not illuminate why the new applicant should be burdened to prove good moral character rather than having such fact presumed with the burden on the Bar to prove otherwise.

is relevant to recall situations where we have determined the burden has been carried for the purpose of reinstatement notwithstanding a record of substantial prior misconduct. These cases are relevant because Mr. Garen's application for admission must be judged by the same criteria as that which has been applied to others. Equal protection of the laws requires no less. Const. art. I, **Ss** 12.

Given it is the burden of the initial applicant as well as the applicant for reinstatement to show evidence of good moral character the question still remains how, in a practical sense, the applicant proceeds to meet that burden. I find not Washington authority on point, however, would commend favorable the California rule which seems persuasive: "Once the applicant has furnished enough evidence of good character to establish a prima facie case, the Committee may attempt to rebut that showing." *Hall v. Committee of Bar Exam'rs*, 25 Cal. 3d 730, 602, P.2d 768, 770, 159 Cal. Rptr. 848, 850, (1979). If the Bar is unable to rebut the prima facie case, then the applicant must introduce further evidence of good moral character or discredit the State Bar's evidence." *Lubetzsy v. State Bar of Cal.*, 54 Cal. 3d 308, 815 P.2d 341, 342, 285 Cal. Rptr. 268, 269 (1991). California also requires that any reasonable doubts encountered by the court in its examination of the evidence be resolved in favor of the accused applicant. *Hallinan v. Committee of Bar Exam'rs*, 65 Cal. 2d 447, 421 P.2d 76, 80, 55 Cal Rptr. 228, 232 (1966). Given our constitutional bias in favor of individual rights, I would adopt this rule as well although the application of such a rule in my opinion is not necessary to resolve this case in petitioner's favor. *See* Const. Art. I,

Ss 1 ("[G]overnments... are established to protect and maintain individual rights.").

Declining to examine in detail the fine points and possible perturbations of the California rule, I suggest the general method requiring an applicant to come forward with a prima facie case with a subsequent burden to disprove upon the Bar Association is at least one logical way to proceed assuming, ad arguendo, the burden to prove good moral character is indeed on the applicant.

Prima Facie Case of Good Moral Character

To prima facie show good moral character, Mr. Garen demonstrated, without dispute, he is currently licensed to practice in both California and Texas. During his 25 years in the California Bar and his 12 years in the Texas Bar, Mr. Garen has never been the subject of a single disciplinary complaint lodged by a client. Nor has he ever been sued for malpractice. Nor has he ever been professionally disciplined by the Bar of Supreme Court of either state and is now, as he has been at all times material hereto, a member in good standing in each state.

Additionally, Mr. Garen produced 13 affidavits of former and current clients, employees, and other attesting to his good moral character. One affidavit came from Jerome Fishkin, former senior prosecutor of disciplinary cases for the California State Bar. Mr. Fishkin stated in his affidavit, "In my knowledge, throughout his twenty-four years of practice of law, Mr. Garen has always demonstrated good moral character. He has

always abided by the high ethical standards required of attorneys. He has never obstructed the administration of justice or otherwise acted unscrupulously in his capacity as an officer of the Court." Clerk's Papers (CP) at 32. Mr. Fishkin concluded, "it is my professional opinion that Mr. Garen is `of good moral character and willing to and in fact does abide by the high ethical standards required of attorneys.'" CP at 32. Similarly, the affidavit of Jim Fitzpatrick a client of Mr. Garen, stated "Clark Garen is the most honest, moral person I have ever had the privilege of knowing...." CP at 35. Many of the affidavits in Mr. Garen's favor were submitted by attorneys who had either worked with or for him. On whole, the affidavits were overwhelming in their praise of Mr. Garen, his ethics, and morality.

He also petitioned our Bar aided by special academic qualifications which speak highly of his desire to excel in his chosen profession.[3]

Such affidavits from friends, colleagues, and brother lawyers are most welcome evidence in

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3. In 1993, Mr. Garen received an LL.M. in Taxation from Golden Gate University in San Francisco. Joseph Walsh, the Dean of the Department of Tax at Golden Gate University during Mr. Garen's residence there, submitted an affidavit attesting to Mr. Garen's achievements in the program. Mr. Garen attained a substantially higher-than-average grade point average, an especially notable achievement given the fact that Mr. Garen had no prior accounting or tax background. There are only three Master of Law programs on the West Coast.

such matters. "A person called on to prove his character is compelled to turn to the people who know him." *Konigsberg v. State Bar of Cal.*, 353 U.S. 252, 264, 77 S. Ct. 722, 729, 1 L. Ed. 2d 810 (1957). The Supreme Court of California "accord[s] `significant weight' in making a prima facie case to testimonials from attorneys on an applicant's behalf." *Lubetzky*, 815 P.2d at 344 n.3, 285 Cal. Rptr. at 271 n.3. Mr. Garen has certainly established a prima facie case of good moral character through his own testimony in addition to the 13 testimonial affidavits. The Character and Fitness Committee did not find otherwise.

Notwithstanding, the Character and Fitness Committee made no affirmative finding regarding Mr. Garen's establishing a prima facie case of good moral character even though it is beyond dispute and beyond controversy. Since the aforementioned is highly relevant if not dispositive of Mr. Garen's good moral character, I find the committee's failure to give credit where credit is due most puzzling as it is the general obligation of the trier of fact to make affirmative findings on the relevant issues where the evidence so indicates. *Federal Signal Corp. v. Safety Factors, Inc.*, 125 Wn2d 413, 442, 886 P.2d 172 (1994). While a reviewing court is in no position to view the demeanor of the witnesses, these matters upon which Mr. Garen relies to demonstrate good character are of an objective factual nature, and many are established within documentary evidence. A reviewing court is as competent to weight the documentary evidence as any court in the first instance. *In re Riley's Estate*, 78 Wn.2d 623, 654, 479 P.2d 1, 48 A.L.R.3d 9 (1970). I therefore believe it would be an accurate statement of the law and entirely reasonable,

based upon these facts, to hold that Mr. Garen should be admitted to practice absent good reason to the contrary.

Facts of Bar's Rebuttal

The Bar's rebuttal to Mr. Garen's claim of good moral character is focused upon eight topics: (1) alleged unpaid property tax liens in California; (2) alleged unauthorized practice of law in Nevada; (3) alleged lack of business license in Las Vegas; (4) litigation with a former business partner; (5) bankruptcy; (6) litigation with a former tenant; (7) Bar complaints in California; and (8) telling only the "technical truth" in his application to be admitted to practice law in this State.

Whether or not any of these topics is a relevant subject of inquiry into "good moral character" is a legal question for further inquiry; however, whether or not any of the above topics has been factually proved is a matter we would normally initially address to the factual findings promulgated by the Character and Fitness Committee. By analogy to review of a bench trial, we normally accept trial court findings as verities on appeal insofar as same were supported by substantial evidence. *Weyerhaeuser v. Pierce County*, 124 Wn.2d 26, 35, 873 P.2d 498 (1994); *Industrial Electric-Seattle v. Bosko*, 67 Wn.2d 783, 791, 410 P.2d 10 (1966). Findings must be made on matters which establish the existence or nonexistence of determinative factual matters, and the findings of fact should reveal the process used by the decision maker. Weyerhaeuser, 124 Wn.2d at 36. However, we would not rewrite the findings for the court; nor would we ordinarily substitute findings to

support a legal conclusion not otherwise supported by findings which the superior court declined to make on its own. *Industrial Electric-Seattle*, 67 Wn.2d at 791. Legal conclusion unsupported by findings fail by their own weight because they lack support. *Alexander Myers & Co. v. Hope*, 88 Wn.2d 449,460, 565 P.2d 80 (1977). Most importantly, "[s]tatements of the positions of the parties, and a summary of the evidence presented, with findings which consist of general conclusions drawn from an `indefinite, uncertain, undeterminative narration of general conditions and events', are not adequate." *Weyerhaeuser*, 124 Wn.2d at 36 (quoting *State ex rel. Bohon v. Department of Pub. Serv.*, 6 Wn.2d 676, 694, 108 P.2d 663 (1940)).

It cannot be gainsaid, however, for the Bar to rebut Mr. Garen's prima facie showing of good moral character it is necessary for the committee to make specific findings of misconduct on the part of Mr. Garen inconsistent with his prima facie showing. Vague denials of professional licenses violate due process. *See In re Berkan*, 648 F.2d 1386, 1388 (1st Cir. 1981) (due process violated when applicant informed of her denial by one sentence letter providing no reasons).

A review of the Bar's findings, however, evidences none are truly findings of any misconduct whatsoever on the part of Mr. Garen. To the extent they are findings of anything, they are findings of the subjective attitude of the committee members which testify to the members' own feelings and doubts. But the committee's comfort level should not be Mr Garen's problem. Nor should it be his problem

that the committee has "doubts," as doubts can arise from a variety of sources including the listener's inattention or lack of understanding.

Where there objective factual findings to be reviewed, we would review same to determine whether such clearly demonstrated a consistent and substantial pattern of moral deficiency rationally related to the applicant's fitness to practice law. "A state can require high standards for application, such as good moral character or proficiency in its law, before it admits an applicant to the bar, but any qualification must have a rational connection with the applicant's fitness or capacity to practice law." *Schware v. Board of Bar Exam'r*, 353 U.S. 232, 239, 77 S. Ct. 752, 756, 1 L. Ed.2d 796, 64 A.L.R.2d 288 (1957).

Yet I find not a single objective finding that Mr. Garen has engaged in any activity, much less a pervasive pattern of activity, inconsistent with good moral character. I would therefore summarily reverse the committee and the Board of Governors based on a facial review of the findings without further inquiry.; Nevertheless I will proceed to test this result by every measure.

Analysis

At issue is the meaning of good moral character in conjunction with the factual question of whether or not Mr. Garen has it.

Although an attorney applicant must "be of good moral character" to be admitted to practice in our State (APR3(a)), beyond this statement there is neither clear nor predictable criteria for determining "good moral character." Such

ambiguity is well suited to abuse:

> The term "good moral character" has long been used as a qualification for membership in the Bar and has served a useful purpose in this respect. However the term, by itself, is unusually ambiguous. It can be defined in an almost unlimited number of ways for any definition will necessarily reflect the attitudes, experiences, and prejudices of the definer. Such a vague qualification, which is easily adapted to pit personal views and predilections, can be a dangerous instrument for arbitrary and discriminatory denial of the right to practice law.

Konigsberg, 353 U.S. at 262-63 (footnote omitted). "The plain truth of the matter is that `good moral character' is an elusive, ill-defined concept often playing to the hearts as well as the minds of those whose task it is to make such judgments about others." C. Graham Carothers, *Character and Fitness: A Need for Increased Perception*, The Bar Examiner 25 (Aug. 1982). As this court has recognized, "[t]he twin questions of good moral character and fitness to practice law escape precise definition." *In re Wright*, 102 Wn.2d 855, 858, 690 P.2d 1134 (1984).[4]

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4. When it is a matter of entry into the profession, the prospective lawyer is required to be a morally good person. Yet once admitted, he is required to be immoral, if not amoral. It is inconsistent and self-defeating

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Our court was impressed by the Florida definition of good moral character:

> "The inquiry into good moral character which emphasizes honesty, fairness, and respect for the rights of others and for the laws of this state and nation is a proper and suitable standard for those who desire to be an integral part of the administration of justice in the courts of this state."

Frederick A. Elliston, *Character and Fitness Tests: An Ethical Perspective*, The Bar Examiner 15-16 (Aug. 1982).

In re Wright, 102 Wn.2d at 858-59 (quoting *Florida Bd. Of Bar Exam'rs re: G.W.L.*, 364 So.2d 454, 458 (1978)).

By dictionary definition, "moral" is "of or relating to principles or considerations of right and wrong action or good and bad character...." *Webster's Third New International Dictionary* 1468 (1976). "Character" includes "outward and visible quality or trait." Id. At 376. "Good moral character" therefore must be a propensity to do right rather than wrong, to be honest rather than dishonest, to be fair rather than unfair, and to

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to test people for qualities they must have in order to be admitted to a profession if they are subsequently required to abjure those same qualities in order to function within it... As long as everyone is entitled to representation, some lawyer will need to assist that person in a legal but immoral act.

respect the rights of others rather than defeat them. The object of our inquiry is therefore to determine a trait or generalization based upon a general course of conduct rather than a particular event, unless that event is so significant so as to have overshadowing importance. In the case of Mr. Wright, for example, the court concluded "second degree murder does not exhibit good moral character." *In re Wright*, 102 Wn.2d at 859. By the same token, prior engagement in criminal enterprise may also point to bad moral character. *Cf. In re Belsher*, 102 Wn.2d at 851-52. Even so, we have admitted or readmitted others to practice notwithstanding prior criminal conduct when rehabilitation is demonstrated. Le us weigh the claims of the Bar by the standard we have set for ourselves in prior proceedings.

We have reinstated attorneys who have committed serious illegal and/or immoral acts including: second-degree assault (*In re McGrath*, 112 Wn.2d 481, 482, 772 P.2d 502 (1989)); misappropriation of client funds (*In re Moynihan*, 113 Wn.2d 219, 220, 778 P.2d 521 (1989); *In re Rosellini*, 108 Wn.2d 350, 355, 739 P.2d 658 (1987); *In re Chantry*, 84 Wn.2d 153, 154, 524 P.2d 909 (1974)); witness tampering (*In re Stroh*, 108 Wn.2d 410, 41, 739 P.2d 690 (1987); *In re Shain*, 24 Wn.2d 598, 166 P.2d 843 (1946)); lying to a client (*In re Livesey*, 94 Wn.2d 251, 252, 615 P.2d 1294 (1980)); possession of bank robbery proceeds (*In re Egger*, 93 Wn.2d 706, 707, 611 P.2d 1260 (1980)); burglary (*In re Krogh*, 93 Wn.2d 504, 505, 610 P.2d 1319 (1980)); grand larceny (*In re Johnson*, 92 Wn.2d 349, 350, 597 P.2d 113 (1979)); assault

with intention to commit rape (*In re Simmons*, 81 Wn.2d 43, 44, 499 P.2d 874 (1972); fraud (*In re Eddleman*, 79 Wn.2d 725, 489 P.2d 174 (1971)); mail fraud (*In re Lonergan*, 23 Wn.2d 767, 767, 162 P.2d 289 (1945)); embezzlement (*In re Lillions*, 196 Wash. 272, 82 P.2d 571 (1938)); and having an affair with a juror in a cause in which the attorney was counsel (*In re Bruener*, 178 Wash. 165, 34 P.2d 437 (1934).[5]

Moreover, regarding just the last seven initial applicants for admission considered by this court, we have granted admission to applicants who have: sold seven ounces each of cocaine and heroin (Bar Applicant No. 60); conspired to import and distribute marijuana and transported $250,000 to another country (Bar Applicant No. 59); engaged in vehicle tampering and shoplifting (Bar Applicant No. 58); sold over a pound of cocaine to undercover officers for $30,500 in addition to possessing over half-a-pound of cocaine (Bar Applicant No. 57); furnished alcohol to a minor, delivered a controlled substance to a minor, and committed third degree sodomy with a 14-year-old girl (Bar Applicant No. 56); broke into a liquor store, burglarized a home, stole payroll checks, and drove under the influence (Bar Applicant No. 55); and possessed marijuana and attempted to commit fraud (Bar Applicant No. 54).

It is therefore our charge to measure Mr. Garen's application by the standard we have

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5. One case, *In re Greenwood*, 22 Wn.2d 684, 157 P.2d 591 (1945), does not report the misconduct for which the attorney was disbarred.

applied to others. I would be most interested to hear any explanation from the majority as to how Mr. Garen has fallen below that standard we have set in the prior proceedings enumerated above. *Cum tacent, clamant.*[6]

Tax Liens

Mr. Garen admitted to tax liens on Los Angeles County property, unpaid since 1990, in the amount of a few thousand dollars. He testified before both the Nevada and Washington committees he currently did not intend to pay the liens but would do so when he sells other real property in Los Angeles. This is frequently the practice since these liens show as a defect in title and new purchasers often, but not necessarily, require clear title before closing.

Aside from simple economics, Mr. Garen testified before the Nevada Committee he did not think the liens were legitimate and initially contested their basis in a proceeding to contest the assessed value. But when he lost his challenge he did not further appeal. He testified he did not pay the liens because he was very upset about the valuation and this was the manner he elected to handle his personal affairs. On this basis the Character and Fitness Committee concluded: "Mr. Garen's cavalier attitude in reference to the tax liens indicate his disregard and disrespect for the lawful process." CP at 7. To the contrary, it appears Mr. Garen fully participated in the process but rather was dissatisfied with its

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6. Their very silence is a loud cry. *Cicero, In Catilinam*, I, 21.

result.

What is missing from the committee's conclusion, of course, is any discussion of how Mr. Garen's failure to pay a tax lien on real property is "immoral." Refusal or failure to pay property tax is *malum prohibitum* , not *malum in se*. Moreover, in both California and Washington it is the property that owes the tax; there is no personal obligation on the part of the individual to pay it. *See City of Huntington Beach v. Superior Court of Orange County*, 78 Cal. App. 3d 333, 144 Cal. Rptr. 236, 240 (1978))"Real property taxes are imposed on the ownership of property as such; they recur annually on a fixed date; and no personal liability arises from their nonpayment, the sole security for the taxes being the property itself."); *Clark-Kunzl Co. v. Williams*, 78 Wn.2d 59, 63, 469 P.2d 874 (1970)("[P]roperty taxes are primarily in rem in character. The tax is imposed against the property itself, not against the owners of the various interests in the land.") One may even acquire property previously burdened by a lien for unpaid taxes. Nonpayment is not indicative of an immoral act; it is an economic decision. As someone with an advanced degree in taxation, Mr. Garen would know better than anyone the implications, or lack thereof, of failing to pay property taxes. Failure to promptly pay real property taxes results in added interest and possible penalties. After a certain time the taxing authority will foreclose absent payment. There is nothing illegal or immoral about deferring payment---or never paying at all.

Mr. Garen also asserts that he was exercising his right to free speech (actually engaging in nonviolent civil disobedience is the

analogy) by not paying taxes on the property:

> The issue is not taxes; it is my moral character. I do not have numerous outstanding tax liens; I **only** have liens on the two parcels of real property that I believe were unfairly assessed and taxed. I do not have unpaid tax bills (or unpaid bills of any other kind or character). I have two unpaid property tax bills that are not paid **because I dispute them!**

CP at 10.

Perhaps the committee considered Mr. Garen's preceding explanation a "cavalier attitude." If so, I find nothing immoral about a cavalier attitude; rather, it is a matter of personality, not morality. Nor can any adverse inference be drawn from Mr. Garen's apparent lack of remorse since there is an inadequate demonstration that he has anything to be remorseful about. *Compare Hall v. Committee of Bar Exam'rs*, 25 Cal. 3d 370, 602 P.2d 768, 776-77, 159 Cal. Rptr. 848, 856-57 (1979)(California Supreme Court reversed committee's rejection of bar applicant, rejecting claim that good moral character requires a false declaration of remorse). We cannot expect Mr. Garen to "beat his breast and loudly proclaim mea culpa for a dissolute past," *Caaway v. State Bar of Cal.*, 41 Cal. 3d 743, 716 P.2d 371, 373, 225 Cal Rptr. 267, 269 (1986), when he believes he has done nothing wrong, and has done nothing wrong in fact.

Although I disagree failure to pay real estate taxes is an act of civil disobedience

absent a personal obligation to pay the tax in the first instance, acts of civil disobedience do not involve moral turpitude in any event. *Hallinan*, 421 P.2d at 85 ("We do not believe that petitioner's participation in the civil disobedience here shown can be characterized as involving moral turpitude. If we were to deny to every person who has engaged in a `sit-in' or other form of nonviolent civil disobedience, and who has been convicted therefor, the right to enter a licensed profession, we would deprive the community of the services of many highest qualified persons of the highest moral courage. This should not be done."). The Boston Tea Party was certainly an illegal tax protest, yet I would not jump to the conclusion those young men were unfit to practice law in this jurisdiction for that reason. Frankly they have demonstrated a zealous quality which might be most desirable to a client.

For these reasons I conclude that Mr. Garen's failure/refusal to pay property taxes in Los Angeles does not rebut his prima facie demonstration of good moral character.

Unauthorized Practice of Law

While he was living in Las Vegas, Mr. Garen used the following letterhead:

Admitted to practice in California and Texas

CLARK GAREN
ATTORNEY AT LAW
ADVERTISING AGENCY
1212 South Casino Center Blvd.
Law Vegas, Nevada 89104
(702) 435-7335
FAX: (702) 434-3247

CP at 292. The committee complained this letterhead did not contain any limiting language (notwithstanding the qualification "admitted to practice in California dn Texas"), expressly stating Mr. Garen did not have a license to practice in Nevada. However, the Nevada Committee affirmatively concluded Mr. Garen's use of the letterhead did *not* constitute the unauthorized practice of law. The Washington committee made no objective finding of immoral conduct but seems to whisper sotto voce this was a factor which "further exacerbate[s] the committee's doubts." CP at 7. But one should not be denied a professional license simply because of "doubts". This court must demand facts.

Mr. Garen testified he did not use the letterhead to solicit legal business in Nevada nor to communicate with Nevada lawyers. He did, however, use the letterhead to communicate with lawyers in California and Texas, jurisdictions where Mr. Garen was licensed to practice law. Such was expressly disclosed on the face of the letterhead.

The letterhead was never even the subject of a complaint before the Nevada Committee. In fact, Mr. Garen volunteered the letterhead himself. Mr. Garen concluded, "Sloppy letterhead without any intent or act of wrongdoing proves that I did not pay proper attention to the preparation of my letterhead; not that I lack good moral character." CP at 13.

Mr. Garen testified he believed listing the jurisdictions in which he was admitted necessarily implied that he was not admitted in all other jurisdictions. Our court is familiar

with the maxim *expressio unius est exclusio alterius* and frequently applies it to discern governmental intention, e.g., *State ex rel. Port of Seattle v. Department of Pub. Serv.*, 1 Wn.2d 102, 112, 95 P.2d 1007 (1939). If such is a legitimate mode of expression for the Legislature, I would not double the standard for Mr. Garen. Certainly this was not a misrepresentation by intent. Once Mr. Garen realized the alleged problem he took steps to correct it. He no longer uses the letterhead. He acted with dispatch, evincing a concern with maintaining the highest ethical standards. The problem with his letterhead does not show bad moral character.

This factor does not rebut Mr. Garen's prima facie showing.

Business License

This is truly absurd. Mr. Garen operated a "900" business from his home, where a computer answered incoming telephone calls and dispensed information for "The Las Vegas JACKPOT of Information." CP at 292. The Nevada Committee found Mr. Garen had made an anonymous inquiry with county authorities concerning the necessity of a business license. The county told him he did not need a business license for this type of operation. The Nevada Committee concluded Mr. Garen should have filed an application with the county in order to receive a definitive determination. The Washington Committee cited this as another factor with "further exacerbate[d] the committee's doubts." CP at 7.

Clark County, Nevada, regulators, where Mr. Garen's "900" number operation originated, never told Mr. Garen he required a license. In fact, the regulators told him the opposite. Nor is there any factual finding from any reviewing committee that he even needed a business license in fact under the Nevada statute nor Clark County, nor Las Vegas ordinances. Yet somehow this is parlayed into a "doubtable" moral failing for not applying for an unnecessary license. That the committee gave any weight at all to this factor is appalling. There is nothing immoral in not applying for a license one does not need. To the contrary, resistance to and suspicion of governmental overstepping is exactly the sort of quality which becomes a lawyer.

> To force the Bar to become a group of thoroughly orthodox, time-serving, government-fearing individuals is to humiliate and degrade it.
>
> But that is the present trend, not only in the legal profession but in almost every walk of life. Too many men are being driven to become government-fearing and time-serving because the Government is being permitted to strike out at those who are fearless enough to think as they please and say what they think.

In re George Anastaplo, 366 U.s. 82, 115-16, 81 S. Ct. 978, 996, 6 L.Ed.2d 135 (1961)(Black, J., dissenting).

The business license factor does not rebut Mr. Garen's prima facie showing of good moral

character.

Litigation and Bankruptcy

I have linked these two factors together because the Federal Bankruptcy Code preempts any consideration of these factors by either the committee or us.

Mr. Garen filed chapter 7 bankruptcy in 1986. On supplemental Schedule B-2--Personal Property to his bankruptcy petition, Mr. Garen stated he had an action then pending in Los Angeles Superior Court against Thomas Loegering, a former business partner. Messrs. Garen and Loegering traced cross-complaints. Loegering claimed Mr. Garen owed him between $300,000 and $600,000, and Mr. Garen claimed Loegering owed him $100,000. In his bankruptcy petition, Mr. Garen declared "the cash value of this case on the date of filing [is] $1,000.00." CP at 348. At the first meeting of creditors, the bankruptcy trustee examined Mr. Garen extensively about the worth of the lawsuit, and then abandoned the asset back to Mr. Garen. CP at 14.

The Loegering case eventually went to trial and a judgment entered in May 1990. In its special verdict form, the jury found Loegering did not commit fraud against Mr. Garen and was not liable to Mr. Garen for any amount of money. The jury awarded Mr. Garen's mother, who was also a cross-complainant in the suit, $205,000 in damages. CP at 364. The jury awarded Loegering $5,424.00 in costs and disbursements against Mr. Garen. CP at 366. In view of the costs awarded Mr. Loegering at trial, it would seem Mr. Garen *overvalued* said suit by $1,000 on his bankruptcy schedule, not to mention he was

in the red zone anyway as a result of having to pay the costs awarded Loegering.

While an appeal was pending in the Loegering case, Loegering decided to cut his exposure and settle with Mr. Garen and Mr Garen's mother. Loegering's only asset was rental property, and Mr. Garen's mother did not with to own such property. Mr. Loegering therefore settled the suit by transferring two pieces of rental property to Mr. Garen, and Mr. Garen represented to the Committee that the estimated worth of the property he received from Mr. Loegering was $750,000.

The committee's comment that Mr. Garen's claim on the bankruptcy petition that "the Loegering decision had limited value (when, in fact, it was subsequently settled for a substantial sum)" misrepresents the time and place in which the original statement of estimated value was made. After all, the trial court awarded him nothing (four years after the bankruptcy petition in question was filed) he was ordered to pay Loegering's costs of over $5,000.00. That he could not have foreseen a "substantial" settlement on appeal of the judgment does not appear to have been part of the committee's considerations.

Another issue addressed by the committee concerning bankruptcy involved a "900" business from which Mr. Garen eventually earned substantial amounts. In his bankruptcy petition, Mr. Garen claimed the "900" number business was not his, but instead belonged to his mother. In its opinion, the committee rather cryptically noted, both with regard to this issue and the Loegering litigation, that Mr. Garen's "representations... to the bankruptcy court were greatly at odds with Mr.

Garen's apparent financial success." CP at 4. In addition, such "conduct within the ... bankruptcy court system[] further exacerbate[d] the committee's doubts." CP at 7. Doubts. Not facts. "Doubts" might arise because the committee didn't understand the facts or the legal consequences--but that is not the same as a practice which has doubtful morality.

Mr. Garen counters that he did not disclose the "900" business to the bankruptcy court for two reasons: one, it was a "976", not a "900" business; and two, his mother owned the business, not him. While his mother employed Mr. Garen as the president of the company, the "976" business was in fact owned in whole by Oregon Properties, Inc., of which Mrs. Garen was the sole stockholder. In 1989, two years after his declaration of bankruptcy, a company owned by Mr. Garen purchased the business from his mother's corporation.[7]

The final issue addressed by the committee about Mr. Garen's actions in bankruptcy concerned an objection by a creditor to a Chapter 11 bankruptcy petition submitted by Mr. Garen. The creditor objected to lines of credit extended to Mr. Garen in excess of $250,000, which the committee stated was based on real property which Mr. Garen had acquired from his parents. According to the committee's opinion, Mr. Garen then transferred title back to his parents after receiving the credit. Mr. Garen recorded neither transfer. In the end, Mr. Garen voluntarily dismissed the chapter 11

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7. Mr. Garen mistakenly testified in front of the committee that he, and not a corporation he owned, purchased the business in 1989.

petition.

Although it is somewhat "doubtful" as to what exactly occurred, Mr. Garen disagreed with the committee's findings and noted that the creditor withdrew its objection, and also noted that he eventually paid this creditor in full. No doubt about that.

It is difficult to refute any conclusions of the committee on this point because it never declared in what way it found these three transactions objectionable or indicative of bad moral character. The committee provided no specific findings of wrongdoing. Rather, these transactions merely exacerbated "the committee's doubts." CP at 7.

Mr. Garen correctly notes that no one ever accused him of committing bankruptcy fraud or withholding assets from the bankruptcy court. In his petition to this court, Mr. Garen states the committee concluded he had "committed bankruptcy fraud." CP at 14. The Washington State Bar Association, in its reply brief, correctly notes, however, that these transactions merely exacerbated the committee's doubts. The Bar does not feel the need to explain how, why or to what extent these transactions were weighted in their determination that Mr. Garen did not possess good moral character. Mr. Garen correctly asserts there is nothing morally wrong with any of these transactions, unless on were to penalize Mr. Garen for his post-bankruptcy financial success, as Mr. Garen must have done something wrong because he became a financial success after having declared financial failure. To the contrary, such experience might commend Mr. Garen to any number of any number of clients

who might seek his assistance so they could follow suit.

No matter what weight the committee placed on any of these transactions, however, it did not have the authority to weigh these matters at all. The committee (and the Bar Association and this court) is preempted from examining any aspect of these transactions by the Supremacy Clause of the United States Constitution because they occurred during the course of a federal bankruptcy case.

11 U.S.C.A **Ss** 525 is entitled "Protection against discriminatory treatment" and provides:

> (a)...[A] governmental unit may not deny, revoke, suspend, or refuse to renew a license, permit, charter, franchise, or other similar grant to, condition such a grant to, discriminate with respect to such a grant against, deny employment to, terminate the employment of, or discriminate with respect to employment against, a person that is or has been a debtor under this title or a bankrupt or a debtor under the Bankruptcy Act...solely because such bankrupt or debtor is or has been a debtor under this title or a bankrupt or a debtor under the Bankruptcy Act, has been insolvent before the commencement of the case under this title, or during the case but before the debtor is granted or denied a discharge, or has not paid a debt that is dischargeable in the case under this title or that was

discharged under the Bankruptcy Act.

The historical and statutory notes to section 525 clarify Congress's intent in passing this section:

> [T]he section is not exhaustive. The enumeration of various forms of discrimination against former bankrupts is not intended to permit other forms of discrimination... This section...prohibit[s] actions by governmental or quasi-govermental organizations that perform licensing functions, *such as a State bar association* or a medical society, or by other organizations that can seriously affect the debtors' livelihood or fresh start...

11 U.A.C. **Ss** 525, Historical and Statutory Notes (emphasis added).

Article VI, clause 2 of the United States Constitution provides "This Constitution, and the Laws of the United States which shall be made in Pursuance thereof...shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding." From this a clause, the doctrine of preemption derived. *Goodwin v. Bacon*, 127 Wn.2.d 50, 57 896 P.2d 673 (1995). The goal in a preemption analysis is determination of congressional purpose. *Id.* While there is a strong presumption against finding preemption, courts will declare a state law preempted where it stands as an obstacle to

the purpose and objectives of Congress. *Inlandboatmen's Union of the Pac. v. Department of Transp.*, 119 Wn.2d 697, 707, 836 P.2d 823 (1992).

The United States Constitution grants to Congress the power "to establish. . .uniform Laws on the subject of Bankruptcies throughout the United States ..." U.S. Const. Art. I, **Ss** 8, cl. 4. The purpose of the federal bankruptcy laws "is to give debtors `a new opportunity in life and a clear field for future effort, unhampered by the pressure and discouragement of pre-existing debt.'" *Perez v. Campbell*, 402 U.S. 637, 648, 91 S. Ct. 1704, 1710-11, 29 L. Ed. 2d 233 (1971)(quoting *Local Loan Co. v. Hunt*, 292 U.S. 234, 244, 54 S. Ct. 695, 699, 78 L. Ed. 1230 (1934), *superseded by statue as stated in In re Saunders*, 105 B.R. 781, 56 Ed. Law Rep. 1225 (1989). To this extent, Congress enacted **Ss** 525, which effectively codified the nondiscrimination ruling in *Perez*.

This court has used the preemption doctrine in the past to restrict the power of the organized Bar to set conditions on readmissions which conflict with the purpose of the bankruptcy law. *In re Batali*, 98 Wn.2d 610, 618-19, 657 P.2d 775, 39 A.L.R. 4th 577 (1983)(Bar requirement that disbarred attorney repay debts preempted where it stands as an obstacle to the purpose and objectives of Congress. *Inlandboatmen's Union of the Pac. v. Department of Transp.*, 119 Wn.2d 697, 707, 836 P.2d 823 (1992).

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The Washington State Bar Association, the Committee on Character and Fitness, and this court cannot be the ultimate arbitrators of whether a person may pursue a discharge in bankruptcy. The United States Constitution and the federal bankruptcy code place that responsibility firmly within the hands of the bankruptcy judges. Anything which interferes with the bankruptcy court's duties and responsibilities to that extent is preempted

under the Supremacy Clause.

Consequently, I fid this factor does not rebut Mr. Garen's prima facie showing because the committee has no right to even question Mr. Garen on any matter concerning his discharge in bankruptcy in the first place. I find no moral flaw in any event.

Belinda Manning Litigation

This issue apparently arose out of a false arrest suit that occurred on property owned by Mr. Garen. The committee noted the suit, and rather cryptically stated "[Mr. Garen's] conduct within the civil... court system[] further exacerbate[s] the committee's doubts." CP at 7. Mr. Garen asserted he did not remember anything about the case and assumed it had been discharged in bankruptcy.

Why did the committee even bring out this issue? There are no details concerning the litigation, no one has made any claim that Mr. Garen acted in an immoral manner, and Ms. Manning did not provide any testimony to the committee. Yet the committee identified this pertaining to Mr. Garen's good moral character. It apparently exacerbated the committee's *doubts*. How? Why? Maybe the committee doesn't know and therefore "doubts" what it is doing. This State's highest court should not be in the business of divining the committee's intent based on vague incantations. I am certainly not going to be the justice to deny Mr. Garen his chosen profession on this fantasy.

This factor does nothing to rebut Mr. Garen's prima facie case.

California Bar Problems

In its response brief to Mr. Garen's petition, the committee states it made no conclusions regarding these matters, yet the committee's opinion references them. Mr. Garen was the subject of seven Bar procedures, a large number of which were instigated by creditors represented by counsel whom Mr. Garen had contacted in the course of his representation of a collection agency. None resulted in any discipline, and no client has ever filed a complaint against Mr. Garen. Sometimes an attorney who zealously represents his clients angers his adversaries because he is doing a good job.

Once again, the committee brought this matter up, but made no specific finding or conclusion of immoral conduct. The issue therefore does not rebut Mr. Garen's prima facie case.

Telling the "Technical Truth"

In his application to the Washington Bar, while awaiting the decision of the Nevada Committee on Character and Fitness, Mr. Garen wrote he was awaiting admission in Nevada. Mr. Garen later explained in a letter to Committee General Counsel Robert Weldon that he reported his status as such because "I believed I had satisfied my burden of proof before the Nevada Committee, [and] I was of the belief that I would receive a favorable recommendation upon [the Nevada Committee's] receipt of the certificate [of good standing] from California." CP at 192. Apparently referring to this matter, the Character and Fitness Committee concluded:

"Mr. Garen's apparent lack of candor makes the committee somewhat apprehensive. It appears as though Mr. Garen usually tells the technical truth, yet a lack of openness and candor is apparent both through the letters and responses to questions given to him by the committee." CP at 7.

Leaving aside how one would tell nontechnical truth, and the unusually large number of qualifiers in the committee's conclusion ("apparent," "Somewhat," "appears"), Mr. Garen stated he believed the Nevada proceedings were a pro forma procedure which he would need to complete before he was admitted to the Bar in that state. Mr. Garen first came to the notice of the Nevada Committee on Character and Fitness because he petitioned for a waiver of the Nevada rule which requires all applicants to graduate from ABA accredited schools. He was sent to its Functional Equivalency Committee, which noted the problems with his stationary letterhead mentioned above. The Functional Equivalency Committee forwarded Mr. Garen to the Committee on Moral Character and Fitness, which conducted a hearing. At the close of the hearing, the Committee on Moral Character and Fitness informed him it would keep his case open until it received a certificate of good standing for Mr. Garen.

Without "doubt" Mr. Garen honestly believed he satisfied his burden of proof during the course of the hearing in Nevada and that he would be admitted to the Nevada Bar at the time he filled out his Washington application. What he reported on his bar application in Washington was factually accurate and honest. But what the committee apparently wanted in hindsight was for Mr. Garen to disclose the worst possible

scenario regarding his application in Nevada. While perhaps it would have been wise for Mr. Garen to have done so (to deal with "doubts"), we are concerned here with whether his failure to disclose the worst case scenario overcomes his prima facie showing of good moral character. It is clear this omission, if one could call it that, does not. Failure to answer questions that are not asked bespeaks a problem with the inquisitor, not dishonesty on the part of the inquisitee.

Courts in other jurisdictions have admitted applicants with far more serious omissions, finding such omissions failed to overcome the applicant's showing of good moral character. *See Reese v. Board of Comm'rs*, 379 So. 2d 564, 568-69 (Ala. 1980)(applicant granted admission after failing to disclose arrests because failure did not rebut applicant's prima facie case established by letters of recommendation by judges and lawyers); *In re Waters*, 84 Nev. 712, 447 P.2d 661, 663 (1968) (applicant admitted after disclosing he had been dismissed form one law school, when he had been dismissed from two, when lack of detail did not constitute "an intentional deception."); *In re Klahr*, 102 Ariz. 529, 433 P.2d 977, 979 (1967) (applicant admitted after failing to disclose existence of two law suits because, while failure was "poor judgment," it was not "sufficient to constitute a lack of good moral character.")

Perhaps in hindsight Mr. Garen should have volunteered more, however, that does not demonstrate the intentional deception necessary to overcome Mr. Garen's proof of good moral character.

Conclusion

Oscar Wilde once said, "Morality is simply the attitude we adopt toward people whom we personally dislike"[8] Given there was no real evidence of bad moral character on Mr. Garen's part, perhaps this explains why the committee did not recommend that Mr. Garen be admitted. I can find no other.

> Throughout its history, the moral fitness requirement has functioned primarily as a cultural showpiece. In that role, it has excommunicated a diverse and changing community, variously defined to include not only former felons, but women, minorities, adulterers, radicals, and bankrupts...In the absence of meaningful standards or professional consensus, the filtering process has proved inconsistent, idiosyncratic, and needlessly intrusive. We have developed neither a coherent concept of professional character or effective procedures to predict it. Rather, we have maintained a licensing ritual that too often had debased the ideals it seeks to sustain.

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8. Quoted in Mark R. Privatsky, *A Critical Review Culminating in Practical Bar Examination Application Techniques in Regards to the "Good Moral Character Requirement"--In re Majorek*, 244 Neb. 595, 508 N.W.2d 273 (1993), 74 Neb. L. Rev e24, 325 (1995)

Deborah L. *Rhode, Moral Character as a Professional Credential*, 94 Yale L.J. 491, 493-94 (1985).

Mr. Garen has proven a prima facie case of good moral character. The character and Fitness Committee has provided no express findings to the contrary. He is, and has been, an attorney in good standing for many years in both California and Texas. I, for one, would welcome him to practice in this State. I request publication of this dissent.[9]

/s/ Sanders, J.

I agree that Mr. Garen should be admitted to the Bar based on comparisons with others whom this court has licensed to practice law. It is also significant that no client has complained or filed a malpractice action against Mr. Garen in the 25 years he has been licensed to practice.

/s/ Madsen, J.

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9. By majority vote the court has denied my request to publish.

Exhibit A

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JULY 22, 1996
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BEFORE THE CHARACTER AND FITNESS COMMITTEE
OF THE WASHINGTON STATE BAR ASSOCIATION

In Re: CLARK GAREN Bar Applicant,	) OPINION OF THE) CHARACTER AND) FITNESS COMMITTEE

This matter was heard by the Character and Fitness Committee at the Washington State Bar Association Offices, Westin Building, 2001 Sixth Avenue, Seattle, Washington on March 30, 1996.

Committee members present were: Edward G. Holm, Shelley J. Hickey, Christina A. Meserve, Pamela J. Bartlett, Daniel D. Zender, Francis J. Kennedy, Deborah Russell, Curman M. Sebree, John T. John, and Dianne Ward Turk. The Bar Association was represented by Robert D. Welden, General Counsel. Clark Garen, the Bar applicant, was present and represented himself.

FACTUAL BACKGROUND

Clark Garen was born September 11, 1946, and was admitted to the practice of law in California in 1972 and in Texas in 1985. He graduated from the University of West Los Angeles School of Law, which is not an approved law school. He therefore applies to the Washington State Bar Association under the provision of APR 3(B) (iii), which provides that to qualify to sit for the Bar examination, an applicant must be admitted to the practice of law and be in current good standing in another state, and have had active legal experience for

at least three of five years immediately preceding filing of a Washington Bar application.

Nevada Proceedings:

On March 9, 1994, a hearing was held on Mr. Garen's application to the Nevada Bar Association. In its findings denying Mr. Garen's petition for waiver, the Committee raised issues regarding Mr. Garen's activities. On August 19, 1994, an additional hearing was held in front of the Character and Fitness Committee of the Nevada State Bar, who denied Mr. Garen's admission on January 6, 1995. This denial was based on Mr. Garen's failure to satisfy tax liens in Los Angeles County, resulting from the sale of real property. The Committee also felt there was a lack of candor in Garen's failure to obtain a business license in connection with a "900" number commercial telephone business, along with his use of ambiguous letterhead with a Las Vegas address.

On October 5, 1995, the Nevada Supreme Court entered an Order denying Mr. Garen's petition appealing the decision. The United States Supreme Court was petitioned for writ of certiorari, which has now been denied.

A summary of the problems identified by the Nevada Bar is as follows:

1. Tax Liens: Mr. Garen admits to having tax liens of a few thousand dollars in Los Angeles County that have been in force since 1990. He testified in Nevada that he had no intention of discharging or challenging the validity of the liens. He would allow them to languish, and if he sold any other real property in California, he would pay the liens at that time. This is still his position, he considers it his own affairs, and feels it is no one else's business.

2. Unauthorized Practice: Mr. Garen used the following letterhead when living in Las Vegas:

CLARK GAREN
ATTORNEY AT LAW
ADVERTISING AGENCY
1212 South Casino Center Blvd.
Las Vegas, Nevada 89104

There is no limiting language as to the fact that Mr. Garen is not admitted to practice in Nevada. Nonetheless, the Nevada Committee concluded that the ambiguity raised was not sufficient to conclude that Mr. Garen engaged in the unauthorized practice of law in the State of Nevada.

3. Business License: Mr. Garen maintained a 900 telephone number business, which he ran out of his Las Vegas home, without a city or county business license. Mr. Garen determined that what he was doing was not running a business within any ordinary terms of the word, and did not get a business license.

The following matters were also disclosed on the Washington Bar application.

4. Loegering Litigation: Mr. Garen was involved in a suit involving a limited partnership with Thomas J. Loegering. In 1983, the property went into foreclosure, and the parties brought litigation against each other. Mr. Garen felt that each of the parties were somewhat victorious. Mr. Garen's cross-complaint against Loegering was dismissed and Ruth Garen (the applicant's mother) was awarded a verdict for $455,000.00 against Loegering, plus $35,177.00 in costs. Following the verdict, a settlement was entered into on May 14, 1990, in which Loegering transferred two parcels of real estate to Mr. Garen, and the judgment was satisfied.

5. Bankruptcy: In 1986, Mr. Garen filed a Chapter 7 bankruptcy which grew out of his difficulties in his real estate partnership. Loegering filed a fraud claim in the proceeding. An order of discharge was entered on July 22, 1987 and the matter was closed on August 20, 1987. In his bankruptcy proceeding, Mr. Garen claimed that the Loegering litigation had limited value (when, in fact, it was subsequently settled for a substantial sum) and that the "900" businesses were not his assets. The representations made to the bankruptcy court were greatly at odds with Mr. Garen's apparent financial success.

Mr. Garen had also disclosed that he had filed a Chapter 11 bankruptcy petition in 1983. An objection was filed by a creditor concerning credit lines which Mr. Garen had obtained in excess of $250,000.00. The extension of credit was based on real property which he says he had acquired from his parents and transferred back to them after obtaining the loan. Neither of the transfers were recorded. The Chapter 11 was dismissed after Mr. Garen deeded his residence to Village Bank in exchange for the cancellation of his debt.

6. Belinda Manning Litigation: This litigation is based on a false arrest suit. Manning had sued and the suit was stayed during a bankruptcy and apparently was resolved in the bankruptcy.

7. Other Bar Problems: Mr. Garen indicated in his application that because he represented collection agencies, five to ten complaints have been filed by the State Bar of California against him, and they were all dismissed. The State Bar of California indicates that sever complaints were filed against Garen in 1994. One complaint concerning a collection matter was closed with a warning letter concerning communication of a party known

to be represented by counsel, and a second was closed with an admonition in 1990 concerning failure to communicate with a client. A third matter resulted in a warning letter in 1992, concerning a contract with a party represented by counsel. All other matters were closed without further action.

Washington Proceedings: Mr. Garen's application to the Washington Bar, signed on November 1, 1993, indicated that he had been admitted in Texas and California, and that he had passed the Nevada Bar Exam and was awaiting admission there. At that time, Mr. Garen was in fact waiting for the decision of the Nevada Character and Fitness Committee, which decision was issued denying his admission on January 6, 1995. In February of 1995, counsel for our Bar association wrote Mr. Garen regarding his failure to disclose the denial of admission in Nevada. In his response of May 11, 1995, Mr. Garen stated as follows:

> The State Bar of Nevada has recommended to the Court that I not be admitted. Under Nevada law, the State Bar of Nevada only makes recommendations to the Court. The Nevada Supreme Court makes final decisions on all admissions questions, and I am not considered to have been denied admission until I either fail to timely file a Petition with the Nevada Supreme Court make a final decision with respect to my Petition. At this time, I have not been denied admission to the State Bar of Nevada.
>
> I did not immediately advise Washington of these proceedings for three reasons. The first was that there was nothing to report but the existence of proceedings. The second reason was that I thought the Nevada situation

would be resolved prior to the availability of Washington results. The third reason was that I had not yet passed the Washington Bar Examination, and until I had passed the Washington would be taking no further action.

The Nevada proceedings were made part of the Washington record and the committee spent a substantial portion of the hearing dealing with problems raised in those hearings.

RECOMMENDATION

The committee respectfully recommends that Mr. Garen not be allowed admission to the Washington State Bar Association.

Under APR 3 (a), Mr. Clark Garen has the burden of establishing that he is of good moral character, and under APR 3(b), that he has active legal experience for at least 3 of 5 years immediately preceding the filing of the application. It is the committee's opinion that he did not carry this burden.

Under APR 39 (c) (iii), if the applicant "...has previously been denied admission to the Bar in this or any other jurisdiction for reasons other than failure to pass a Bar examination" the burden of demonstrating good moral character rests on the applicant, and it is ultimately up to the Supreme Court to determine whether the Bar applicant meets that burden. The problems which are set out in the factual summaries above seem not to concern Mr. Garen, although the committee feels they are very serious indications of the applicant's character.

Mr. Garen's apparent lack of candor makes the committee somewhat apprehensive. It appears as though Mr. Garen usually tells the technical truth, yet a lack of openness and candor is apparent both through the letters and responses to questions given to him by the committee.

Mr. Garen's cavalier attitude in reference to the tax liens indicate his disregard and disrespect for the lawful process. His handling of his affairs with the use of misleading stationary, problems with his business license, and his conduct within the civil bankruptcy court systems further exacerbate the committee's doubts.

CONCLUSION

In conclusion, it is the Committee's opinion that the applicant did not carry the burden of proof required to convince the Committee members that his application should be approved, and the Committee recommends that he be denied admission to the Washington State Bar Association.

/s/ Daniel D. Zender
Daniel d. Zender, Chair
Character and Fitness Committee